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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,076	01/18/2006	Takeshi Koda	8048-1138	3920
466 7590 07/30/2010 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			EXAMINER PENDLETON, DIONNE	
			ART UNIT 2627	PAPER NUMBER
			NOTIFICATION DATE 07/30/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/565,076

Applicant(s)

KODA ET AL.

Examiner

DIONNE H. PENDLETON

Art Unit

2627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Wayne Young/
Supervisory Patent Examiner, Art Unit 2627

Continuation of 11, does NOT place the application in condition for allowance because: Response to Arguments

1. Applicant's arguments filed 7/12/2010 have been fully considered but they are not persuasive.

Specifically, Applicant submits the following:

"Park does not disclose that the PSN of the replacement cluster and the PSN of the defective cluster are separately recorded in the OSA1. In other words, Park does not disclose that (i) the PSN of the replacement cluster is recorded with one predetermined point which exists in the OSA1 as a start point and (ii) the PSN of the defective cluster is recorded with another predetermined point which exists in the OSA1." In response to Applicant's argument:

The Applicant's claim specifically recites, "evacuation data ...with one predetermined point...as a start point", and "defect management information being recorded with another predetermined point...which [is] different from the...start point".

Page 4/4 of Provisional application 60/469,005 teaches an outer spare area (OSA1) comprising a plurality of replacement clusters for recording therein at least replacement information ("replacement information" corresponding to "evacuation data" of the claim).

Page 4/4 of Provisional application 60/469,005 further teaches that each cluster further comprises an Access Block, and said Access Block, further comprising an "address unit" and a "user control block". The "address unit" of the Access Block is disclosed as containing the PSN of the replacement cluster, and the "user control block" of the Access Block is disclosed as containing the PSN of the defective cluster. Therefore, any one of the "address unit" and the "user control block" are interpreted as corresponding to "defect management information", being stored within the shared area, as recited in the Applicant's claim.

One of ordinary skill in the art understands the data structural arrangement of an optical storage medium to comprise a plurality of annularly arranged storage areas (see the provided figured in Page 4/4 of Provisional application 60/469,005). Therefore, it is reasonable to conclude that the "address unit" and "user control block" of the Access block of a replacement cluster, will be annularly removed, one from the other. However, the Applicant's claim requires that the starting point of the "evacuation data" differs from the starting point of the "defect management information". Consider the scenario wherein the starting point for the "evacuation data" within a replacement cluster of the OSA1 of PARK, also serves as the starting point of the "user control block". This is possible since the recording operation may be carried out in opposing directions when respectively recording the evacuation data and the defect management information. Even in this instance, the "address unit", which also corresponds to "defect management information" will have a start point which exists at a different point from the start point of the evacuation data.

For this reason, the reliance upon Provisional application 60/469,005 as disclosing the claimed feature, is maintained.

2. The Applicant further submits that "The Same Argument Can Be Applied Likewise To Hwang (And The Provisional Application Of Hwang) And Ito. Namely, Each Of Hwang And Ito Does Not Disclose The Above Feature Of The Claims."

In response to the Applicant's argument:

Neither HWANG nor ITO are relied upon as disclosing this particular feature of the Applicant's invention. PARK (and the provisional application of PARK), are maintained as fairly disclosing that feature which is the subject of the Applicant's argument.